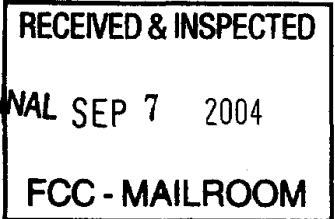


Before the
Federal Communications Commission
Washington, DC 20554



In the Matter of)	
)	
Request for Review of the)	
Decision of the)	File Nos. SLD 880127, 880132,
Universal Service Administrator by)	880133, 880135, 880141, 880148,
)	880150
Lt. Joseph P. Kennedy Institute)	
801 Buchanan Street, NW)	CC Docket No. 02-6
Washington, DC 20017)	

REQUEST FOR REVIEW

Comes now, the Lt. Joseph P. Kennedy Institute (the "Kennedy Institute"), by and through its counsel, Keith R. Malley, this September 2, 2004, and hereby files this Request for Review, pursuant to Federal Communication Commission (FCC) regulations, 47 CFR 54.719, 54.720 and 54.721, of the Universal Service Administrator's Decision on Appeal – Funding Year 2002-2003, dated July 6, 2004, denying the Appeal in full. In support hereof, the Kennedy Institute states as follows:

Identification and Contact Information

Billed Entity Name:	Lt. Joseph P. Kennedy Institute
Billed Entity Number	21683
471 Application Number:	327671
Funding Request Numbers:	880127, 880132, 880133, 880135, 880141, 880148, 880150
Funding Year:	2002-2003
Date of Decision Appealed:	July 6, 2004
Authorized Representative:	Keith R. Malley Keith R. Malley, PC 2111 Wilson Boulevard, Suite 600 Arlington, VA 22201 Tel: 703-351-5061 / Fax: 703-351-1055 Email: kmlaw@mindspring.com

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Summary of the Filing

This Request for Relief concerns the disallowance by the Universal Service Administrator School and Libraries Division (the “Administrator”) of E-Rate funding previously committed and paid to the Lt. Joseph P. Kennedy Institute (the “Kennedy Institute”) for telecommunications services at a Kennedy Institute school in Washington, DC that provides adult education services at the elementary and secondary pre GED level for people with mental retardation and developmentally disabilities.

The disallowance stems from an Internal Audit conducted by the Administrator’s Audit Department, which concluded that the school was an adult education facility and that Washington DC adult education students/facilities are not eligible for E-rate funding. The Administrator subsequently issued a commitment adjustment based on this audit.

The Kennedy Institute filed an appeal to the Administrator of the commitment adjustment, and included substantial material evidence that adult education facilities in Washington, DC, including the subject school, are defined as schools under District of Columbia law and by the cognizant State Education Agency (SEA) for adult education.

The Administrator denied the appeal in full, on the ground that documentation compiled during its Internal Audit indicated that the subject school was not a school under District of Columbia law. The Administrator did not consider certain material evidence submitted by the Kennedy Institute.

This Request for Review requests an order that adult education facilities in Washington, DC, including the subject school, are defined as schools under District of Columbia law, and qualify and are eligible for E-rate funding. The Request asks that that Administrator’s Decision be vacated, and the underlying audit report also vacated.

Statement of Interest

The Kennedy Institute's appeal of an adverse commitment adjustment letter from the Universal Service Administrator (the "Administrator") regarding E-rate funding has been denied in full by the Administrator, by Administrator's Decision dated July 6, 2004. The Kennedy Institute is therefore an interested party in this matter, in accordance with FCC regulations, 47 CFR 54.721(b)(1).

Statement of Facts

Background

1. The Kennedy Institute is a nationally recognized nonprofit organization that has been providing special education services to mentally retarded developmentally disabled persons in the District of Columbia for nearly 40 years. The Kennedy Institute operates a school that provides adult education services to developmentally disabled persons at a facility at 680 Rhode Island Avenue, NE, Washington, DC (the "Rhode Island Avenue facility"). The adult education services consist of a basic elementary and secondary education program for students with moderate to severe learning and developmental disabilities, such as literacy training, basic elementary and secondary education, and GED preparation.

2. In 2001, the Kennedy Institute filed a Form 470 Description of Services Requested with the Administrator, including a request for E-rate funding for the Rhode Island Avenue facility for the funding year 2002-2003. The Kennedy Institute followed FCC Form 470 instructions, which define the term "school" by reference to the

Elementary and Secondary Education Act of 1965, as amended, 20 USC 8801(14) and (26), and the FCC regulations, 47 CFR 54.500, as follows:

“An elementary school is a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law. 47 CFR 54.500(b) and 20 USC 8801(14). A secondary school is a non profit institutional day or residential school, including a public secondary charter school, that provides secondary education as determined under state law, except that such term does not include any education beyond grade 12. 47 CFR 54.500(j) and 20 USC 8801(26).”

Form 470 Instructions, section II A

3. On August 26, 2002, the Administrator issued a Funding Commitment Decision Letter to the Kennedy Institute for the funding year 2002-2003, including a grant of E rate funding for the Rhode Island Avenue facility¹.

The Administrator’s Audit and Commitment Adjustment

4. In June 2002, the Administrator’s Internal Audit Department conducted an audit of E-rate funding to the Kennedy Institute, including the Rhode Island Avenue facility. The Audit Department then issued an Audit Report, dated July 11, 2002 (the “Audit Report”), a copy of which is attached as Exhibit One. The Audit Report stated:

“In our visit to the Rhode Island Avenue facility, we observed a computer lab purposefully designed to assist students in learning computers skills and searching for job opportunities. **Adult education students (over the age of 18) utilize this facility. Per PIA operating procedures, Washington DC adult education facilities/students are not eligible for E-rate funding.**”

Audit Report, page 3, Section F 2
(bold added for emphasis)

¹ The Kennedy Institute filed a Letter of Appeal of this Funding Commitment Decision Letter, dated September 5, 2002 (the “First Appeal”), appealing certain funding requests not funded on the basis that 30% or more of the FRN included requests for ineligible products or services. This First Appeal was later denied in full, by Administrator decision dated April 15, 2004.

5. Previously, by letter to the Audit Department dated June 27, 2002, the Kennedy Institute objected to a draft of the Audit Report that contained the identical language quoted in section 4, above. The Kennedy Institute advised the Audit Department that the computer lab was used by learning and developmentally disabled students in a secondary school program, and that the program met the definition of “secondary school” as set forth in the FCC regulations, 47 CFR 54.500. The Audit Department did not correct the subject language, however, but simply added the Kennedy Institute response below the language as a secondary stand alone response, leaving the impression the Audit Department did not agree with the Kennedy Institute’s objection.

6. The Administrator subsequently issued a Commitment Adjustment Letter to the Kennedy Institute, dated January 31, 2003 (the “Commitment Adjustment Letter”), rescinding approximately \$40,000 in previous funding commitments in the Funding Commitment Decision Letter dated August 26, 2002. A copy of the Commitment Adjustment Letter is attached as Exhibit Two. The Commitment Adjustment Letter stated in its funding commitment adjustment explanations as follows:

“A Beneficiary Audit found that the entity (Rhode Island Avenue Facility) receiving this service is an adult education facility. **Based on information provided by the District of Columbia it has been determined that adult education facilities in the District of Columbia are not eligible for support under the SLD Support Mechanism. Accordingly, the commitment amount is rescinded in full.**”

Commitment Adjustment Letter,
page 4 – 8 (bold added for emphasis)

7. Upon information and belief, the only basis for the statement in the funding commitment adjustment explanations quoted in section 6, above, that “based on information provided by the District of Columbia it has been determined that adult education facilities in the District of Columbia are not eligible for support under the SLD

Support Mechanism”, is a letter from Joseph W. Lane, Chief Technology Officer of the District of Columbia Public Schools (DCPS), dated on or about November 29, 2000, that the definition of the term “school” in the District does not include separate facilities for pre-kindergarten or adult education. However, this information is not correct, because DCPS is not the State Education Agency for the District of Columbia, and DCPS does not have authority with respect to adult education in the District of Columbia. See DC Code 38-1202.12(a); compare DC Code 38-102. See Sections 17 and 18, below.

The Kennedy Institute Appeal to the Administrator

8. On February 26, 2003, the Kennedy Institute filed an Appeal with the Administrator of the Commitment Adjustment Letter (the “Appeal”). In the Appeal, the Kennedy Institute argued that the Rhode Island Avenue facility met the statutory definition of a secondary school, because it does not include any education beyond grade 12. A copy of the Appeal is attached as Exhibit Three.

9. The Kennedy Institute’s attorney, Keith R. Malley, later filed an additional letter with the Administrator’s Internal Audit Department, dated June 10, 2003, requesting that the Audit Report be revised to distinguish between schools like the Rhode Island Avenue facility that provide adult education at the elementary and secondary level for developmentally disabled persons, and other schools that provide adult post secondary education for persons not developmentally disabled. The letter requested a finding that the Audit Report’s failure to make this distinction and to take account of the statutory definition of the term “school” was contrary to Government Auditing Standards. The letter noted that the Telecommunication Act of 1996 mandates the FCC to promote universal access to telecommunication services, and that it would be against the policy of

the Act to deny access by persons with developmental disabilities. A copy of Mr. Malley's letter dated June 10, 2003 is attached as Exhibit Four.

10. In response, Ed Falkowitz, Manager of Audit Response for the Internal Audit Department, telephoned Mr. Malley on June 19, 2003, and advised that because of the pending Appeal, the Audit Report could not be revised. Mr. Falkowitz said he would instead forward Mr. Malley's letter to be added to the Appeal file.

11. Therefore, Mr. Malley forwarded to both Mr. Falkowitz and directly to the Appeals Group a critical material letter from the State Education Agency (SEA) for adult education in the District of Columbia, dated July 30, 2003. A copy of the letter from the SEA is attached as Exhibit Five, with Mr. Malley's forwarding letters dated August 6 and 27, 2003 included for reference. The letter from the SEA states:

"The SEA for the District of Columbia has determined that facilities in the District that provide adult education services for individuals reading at elementary or secondary school/pre GED level qualify and are eligible for Schools and Libraries Division (SLD) E-rate funding especially since mandatory universal fees from telecommunication usage are earmarked for individuals who would not otherwise afford and/or have access to technology."

Letter from SEA dated July 30, 2003
(bold added for emphasis)

The letter from the SEA further states that:

"The Kennedy Institute has provided such adult education since 1998 at one or more of its facilities in the District, including the facility at Rhode Island Avenue, NE. These facilities continue to serve adults who have fallen through the safety net of the traditional education system in completing elementary and secondary education. Therefore, these facilities qualify and are eligible for SLD E-rate funding."

Letter from SEA dated July 30, 2003
(bold added for emphasis)

The Administrator's Decision Denying the Appeal

12. The Administrator subsequently issued its Decision on Appeal, dated July 6, 2004 (the "Decision"), and denied the Appeal in full.² A copy of the Decision is attached as Exhibit Six³. The Decision states that the Rhode Island Avenue facility was found during the Internal Audit site visit to be providing adult education. The Decision states that the documentation provided on Appeal by the Kennedy Institute dated February 25, 2003, and the additional information provided by Mr. Malley dated June 10, 2003 "does not prove that the Audit Report determination was incorrect". The Decision references the definition of elementary school and secondary school set forth in the US Code, 20 USC 7801(18) and 20 USC 7801(38), and then concludes that:

"whether an individual school.... [is] eligible for discounts depends on whether the entity is a nonprofit institutional day or residential school that provides elementary or secondary education through grade 12 as determined under state law. **The documentation (Funding Year 2000 Internal Audit Report) that was compiled during the USAC Audit indicated that this entity [the Rhode Island facility] does not satisfy the definition(s) explained above. Consequently, the SLD denies your appeal.**"

Administrator's Decision, July 6, 2004
(language in brackets added for clarity)
(bold added for emphasis)

13. The Administrator's Decision does not describe in any way the documentation it says was compiled during the Audit Report. The Administrator's

² The Administrator had previously issued another decision, dated April 15, 2004, denying in full the Kennedy Institute's First Appeal dated September 5, 2002. The Administrator's decision dated April 15, 2004 is not directly at issue herein; except, if this Appeal is granted and the Rhode Island adult education facility is found to be a school qualified for E-rate funding, then the Administrator's decision dated April 15, 2004 should be rescinded because it is based in part on findings that certain services and products are ineligible for E rate funding because they are for programs for adults with developmentally disabilities.

³ The Administrator had previously issued two other decisions, both dated January 20, 2004, denying in full the Kennedy Institute's appeal of funding commitment adjustment letters for the funding years 2000-01 and 2001-02. The Kennedy Institute has filed Requests for Review of these decisions with the FCC, filed March 19, 2004, which Requests are pending as of the date of this Request for Review. All of the Requests involve substantially similar facts and issues.

Decision does not describe or provide any support at all for the information referenced in the funding commitment adjustment explanation (upon information and belief, the letter of Joseph Lane dated on or about November 29, 2000, see Section 7 herein) as the sole basis for determination that adult education facilities in the District of Columbia are not eligible for support under the SLD Support Mechanism.

14. Moreover, the Administrator's Decision does not discuss, consider or take any account of the critical material letter from the SEA dated July 30, 2003, or of Mr. Malley's letters dated August 6 and 27, 2003 forwarding the same, all of which were in the Appeal record to be considered by the Administrator. The letter from the SEA expressly states that facilities in the District that provide adult education services for individuals reading at elementary or secondary school/pre GED levels, including the Kennedy Institute Rhode Island Avenue facility, qualify and are eligible for SLD E-rate funding. See Exhibit Five. This letter of the SEA is further confirmed by letter of Gregory McCarthy, Deputy Chief of Staff of the Executive Office of the District of Columbia, dated March 8, 2004, stating that "the State Education Agency – Adult Education at the University of the District of Columbia is the official state agency for adult education in the District." See Exhibit Seven, a copy of Mr. McCarthy's letter dated March 8, 2004.

Questions Presented for Review

- I. Whether the Rhode Island Avenue facility, that provides adult education at elementary and secondary pre-GED levels, is a school under the law of the District of Columbia, and qualified and eligible for E-rate funding.

- II. Whether the Administrator's Decision is arbitrary and capricious because it does not articulate any objective basis for its finding that the Rhode Island Avenue facility is not a school under District of Columbia law.
- III. Whether the Administrator's Decision and the Audit Report are arbitrary and capricious because they do not take any account of material information in the Appeal record that proves that the Rhode Island Avenue facility is a school under District of Columbia law, and qualified and eligible for E-rate funding.
- IV. Whether the Administrator's denial of E rate funding for the Rhode Island Avenue facility violates the public policy of the Telecommunications Act of 1996 because it is contrary to the mandate to promote universal access to telecommunications services, and the Americans with Disabilities Act (ADA) and the Individuals with Disabilities Education Act (IDEA), because it discriminates against persons solely on account of developmental disabilities.
- V. Whether the Administrator's denial of E rate funding for the Rhode Island Avenue facility violates the Equal Protection Clause of the 14th Amendment of the United States Constitution, because it discriminates against persons solely on account of developmental disabilities.

Statement of the Relief Sought

The Standard for Review

15. This Request for Review is entitled to de novo review under the FCC regulations, 47 CFR 54.723, which provide that the Federal Communication Commission

and Wireline Competition Bureau shall conduct de novo review of requests for review of decisions issued by the Administrator.

Relief I - Issue an Order that the Rhode Island Avenue facility is a School,
Eligible for E-Rate Funding

16. The present Request for Relief can be narrowed to one principal issue; whether the Kennedy Institute's Rhode Island Avenue facility is a "school" under the law of the District of Columbia. This issue can only be answered by reference to the statutes and regulations of the District of Columbia, and to guidance provided by authorized agencies of the District government.

17. District of Columbia law and regulations provide that the Board of Education is the State Education Agency for the District, while any public agency with administrative control of a public elementary or secondary school in the District (i.e, the District of Columbia Public Schools (DCPS)) is the Local Education Agency (LEA). See DC Code 38-102(a); see 5 DCMR 3800.1; 5 DCMR 3001. However, by special legislation first adopted in 1998, the District of Columbia has further provided, with respect to adult education, that the University of the District of Columbia is the State Education Agency (SEA) for adult education in the District. Specifically, DC Code 38-1202.12(a) provides as follows:

"(a) Notwithstanding any other provision of District law, the University of the District of Columbia shall be the state agency responsible for supervision of adult education in public schools. All functions, powers, duties and funding of the Board of Education and the District of Columbia Public Schools regarding adult education shall be vested in the Trustees [of the University of the District of Columbia]. All rules, orders, obligations, determinations and understandings of the Board of Education or the District of Columbia Public Schools relating to adult education shall remain in effect until lawfully amended, repealed or modified by the Trustees."

DC Code 38-1202.12(a)
(bold added for emphasis)
(language in brackets added for clarity)

18. The term “school” is not expressly defined by District of Columbia statutes and regulations. However, the DC Code 38-1202.12(a) makes clear that the SEA has sole authority with respect to adult education. As such, the SEA is solely authorized to define whether or not adult education facilities constitute schools. In the present case, the SEA has clearly defined the Kennedy Institute’s Rhode Island Avenue facility as a school. Specifically, the SEA has stated, in its letter dated July 30, 2003, attached as Exhibit Five, that the law of the District of Columbia is that facilities in the District that provide adult education services for individuals reading at elementary or secondary school/pre GED level are defined as elementary schools and secondary schools under District law, and such facilities, including the Rhode Island Avenue facility, qualify and are eligible for E-rate funding. This has further been confirmed by the letter of March 8, 2004 from the Deputy Chief of Staff for the Executive Office of the District of Columbia. See Exhibit Five. See Exhibit Seven.

19. The present Request for Relief is similar to In the Matter of Request for Review of Decision of the Universal Service Administrator by Arkansas Department of Correction School District, File No SLD-177074, CC Docket No. 96-45, CC Docket No. 97-21, April 22, 2002. In that case, the Administrator denied E-rate funding for discounted services on the grounds that the recipients, various correctional units (juvenile detention facilities) within the Arkansas Department of Corrections, were ineligible entities because they did not meet the statutory definition of schools. The Wireline Competition Bureau did not agree. The Bureau found that the correctional units at issue

were schools as determined under Arkansas law, and that they were also subject to the Individuals with Disabilities Education Act (IDEA). The Bureau held that correctional units that provide elementary or secondary education in Arkansas constitute elementary and secondary schools under both Arkansas law and the IDEA. The Bureau vacated the Administrator's denial of funding.⁴

20. In the present Request for Relief, the Rhode Island Avenue facility provides adult education services at the elementary and secondary level, and is defined as a school under District of Columbia law, as determined by the SEA and in accordance with the DC Code, 38-1202.12(a). The present case is therefore substantially similar to the Arkansas Department of Correction School District case, because in the present case the Rhode Island Avenue adult education facility meets the District of Columbia definition of a school. Therefore, as relief sought, the Kennedy Institute requests that the FCC and Wireline Competition Bureau order that the Rhode Island Avenue facility is a school eligible for E-rate funding, and restore to the Kennedy Institute all funding lost on account of the Commitment Adjustment Letter.

Relief II – Vacate the Administrator's Decision because it does not articulate any objective basis for finding the Rhode Island Avenue facility is not a School

21. The Administrator's Decision does not articulate any objective basis for its finding that adult education facilities for developmentally disabled persons, such as the Rhode Island Avenue facility, are not defined as schools by the law of the District. The

⁴ To be distinguished is the case In the Matter of Request for Review of Decision of the Universal Service Administrator by New Haven Adult Education Center, File No SLD-330527, CC Docket No. 02-6, May 18, 2004, where the Bureau found an adult education school on Connecticut ineligible for E-rate funding. The school offered classes for students who already had a high school diploma, and the school did not meet the Connecticut Code's definition of the term "school."

Decision simply states the Federal statutory definition, that an “elementary school” is a “school... that provides elementary education, as determined under State law”, and a “secondary school” is a “school... that provides secondary education, as determined under State law, except that such term does not include any education beyond grade 12”. But the Decision does not provide any discussion of the applicable State law, the law of the District of Columbia, except to obliquely state that the documentation compiled during the Internal Audit (which is incorrect information) indicated that the Rhode Island Avenue facility does not meet the definition of “school”.

22. The Administrator’s Decision simply assumes its conclusion, using circular language, without providing any discussion, reasoning, documentation or citation to substantiate and validate its assumed conclusion. The Administrator’s Decision is therefore arbitrary, capricious and contrary to law. Therefore, as relief sought, the Kennedy Institute requests that the FCC and Wireline Competition Bureau vacate the Administrator’s Decision, and order that the Rhode Island Avenue facility is a school eligible for E-rate funding, and restore to the Kennedy Institute all funding lost on account of the Commitment Adjustment Letter.

Relief III – Vacate the Administrator’s Decision and the Audit Report because they do not take account of material information in the record that proves that the Rhode Island Avenue facility is a School

23. Moreover, the Administrator’s Decision does not discuss, consider or take any account of the critical material information provided by the Kennedy Institute to both the Audit Department and the Appeals Group, while the Appeal was pending, more than five months prior to the date of the Decision. See Exhibit Four and Exhibit Five. This

material information makes clear that the State Education Agency (SEA) for adult education in the District is the University of the District of Columbia. The information further makes clear that the District's SEA has determined that the law of the District is that facilities in the District that provide adult education services for individuals reading at elementary or secondary school/pre GED level, including the Kennedy Institute Rhode Island Avenue facility, are defined as elementary schools and secondary schools under District law, and therefore qualify and are eligible for E-rate funding. See Exhibit Five.

24. The failure and refusal of the Audit Department to correct the Audit Report as requested by the Kennedy Institute and find the Rhode Island Avenue facility a school under District of Columbia law eligible for E-rate funding is contrary to Government Auditing Standards (the "Yellow Book"). The Yellow Book requires that sufficient, competent and relevant evidence be obtained to afford a reasonable basis for auditors' findings and conclusions (section 6.46), that when comments of officials of the audited program oppose a draft finding the auditors must modify the report when the comments are valid (section 7.42), and that the audit report must be complete, accurate, fair and not misleading (section 7.50 through 7.58). The Audit Report fails in all these regards.

25. The Administrator's failure to discuss, consider or take any account of material information provided by the Kennedy Institute further compounds the errors of the Audit Department. The Administrator's Decision is therefore arbitrary, capricious and contrary to law. Therefore, as relief sought, the Kennedy Institute requests that the FCC and Wireline Competition Bureau vacate the Administrator's Decision and the Audit Report, and order that the Rhode Island Avenue facility is a school eligible for E-

rate funding, and restore to the Kennedy Institute all funding lost on account of the Commitment Adjustment Letter.

Relief IV – Vacate the Administrator’s Decision and order that denial of E-rate funding for the Rhode Island Avenue facility violates the public policy of the Telecommunications Act, the Americans with Disabilities Act and the Individuals with Disabilities Education Act

26. On a fundamental level, the Administrator’s denial of E-rate funding for the Rhode Island Avenue facility violates the public policy of the Telecommunication Act of 1996, 47 USC 254. The Telecommunications Act sets forth an express mandate for the FCC to promote universal access to telecommunication services, including expressly access for elementary and secondary schools. It would be against the underlying policy of the Act to deny E-rate funding discounts to facilities that provide adult education to mentally retarded developmentally disabled persons, who are among the persons least likely to have access to telecommunication services (see also the Individuals with Disabilities Act (IDEA), 20 USC 1400 et. seq., which requires states to ensure that students up to the age of 21 with a developmental disabilities receive a free appropriate public education, and the Americans with Disabilities Act (ADA), 42 USC 12101 et. seq., which has as a principal purpose the elimination of discrimination against persons with disabilities). Therefore, as relief sought, the Kennedy Institute requests that the FCC and Wireline Competition Bureau vacate the Administrator’s Decision, and order that denial of E-rate funding for the Rhode Island Avenue facility violates the public policy of the Telecommunications Act, the Americans with Disabilities Act and the Individuals with Disabilities Education Act.

Relief V – Vacate the Administrator’s Decision and order that denial of E-rate funding for the Rhode Island Avenue facility violates the Equal Protection Clause of the 14th Amendment of the United States Constitution

27. On the most fundamental level, the Administrator’s Decision and denial of E-rate funding to the Rhode Island Avenue facility, at its core, is directly contrary to the 14th Amendment to the US Constitution. The 14th amendment guarantees to all persons the right to equal protection of the law:

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

14th Amendment, US Constitution

The Supreme Court has held that a classification that bears no rational relationship to any conceivable legitimate government interest does not meet that rational basis standard, and should not be upheld. Thus, the Supreme Court has struck down a zoning ordinance that allowed denial of a special use permit to a group of unrelated mentally retarded developmentally disabled persons who wished to share a residential home. The government has no legitimate interest in prohibiting developmentally disabled people from living together. Cleburne v. Cleburne Living Center, Inc., 473 US 432 (1985).

28. Likewise, in the present Request for Review, neither the Administrator or the District of Columbia has any legitimate interest in prohibiting developmentally disabled people from sharing in the benefits provided by E-rate funding intended to promote universal access to telecommunication services, including expressly access for elementary and secondary schools. Therefore, as relief sought, the Kennedy Institute

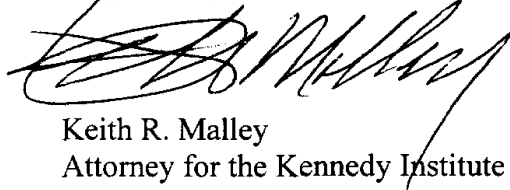
requests that the FCC and Wireline Competition Bureau vacate the Administrator's Decision, and order that denial of E-rate funding for the Rhode Island Avenue facility violates the Equal Protection Clause of the 14th Amendment of the United States Constitution.

Therefore, on all of these grounds, the Kennedy Institute respectfully requests that the FCC and Wireline Competition Bureau:

- (i) order that the Rhode Island Avenue facility is a school eligible for E-rate funding,
- (ii) vacate the Administrator's Decision denying the Appeal,
- (iii) vacate the Audit Report as the basis of the Administrator's Decision,
- (iv) order that denial of E-rate funding for the Rhode Island Avenue facility violates the public policy of the Telecommunications Act, the Americans with Disabilities Act and the Individuals with Disabilities Education Act,
- (v) order that denial of E-rate funding for the Rhode Island Avenue facility violates the Equal Protection Clause of the 14th Amendment of the United States Constitution,
- (vi) restore to the Kennedy Institute all funding lost on account of the Commitment Adjustment Letter,

- (vii) grant the Kennedy Institute its attorney fees and costs in pursuing the Appeal and this Request for Review, and such other and further relief as to which it may be entitled at law or in equity.

Respectfully submitted,



Keith R. Malley
Attorney for the Kennedy Institute

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Email: kmlaw@mindspring.com

Certificate of Service

I hereby certify that a copy of the foregoing Request for Relief was mailed, postage prepaid, to the Universal Service Administrative Company, Schools & Libraries Division, Box 125 – Correspondence Unit, 80 South Jefferson Road, Whippany, New Jersey 07981, this September 2, 2004.



Keith R. Malley

EXHIBIT ONE



Universal Service Administrative Company

Wayne Scott
Director, Internal Audit

MEMORANDUM

To: George McDonald
From: Wayne Scott *WS*
Date: July 11, 2002
Re: Audit of Lt. Joseph P. Kennedy Institute, BEN #21683

The Internal Audit department conducted an audit of the Lt. Joseph P. Kennedy Institute, a private school located in Washington, D.C., for Funding Year 2000.

The purpose of this audit was to ensure the school's compliance with FCC regulations and the Schools & Libraries program rules. In accordance with our audit plan, we have documented the scope of our audit and our observations in the attached Audit Report.

We provided the auditee with the opportunity to respond to our report and included their response.

If you have any questions, please contact me at x1648.

cc: C. Parrino
P. McCafferty

UNIVERSAL SERVICE ADMINISTRATIVE COMPANY
INTERNAL AUDIT REPORT
LT. JOSEPH P. KENNEDY INSTITUTE
FUNDING YEAR 2000

The Internal Audit Department of the Universal Service Administrative Company performed an audit of the Lt. Joseph P. Kennedy Institute (hereinafter referred to as "Kennedy") for Funding Year 2000. Kennedy received the following commitments and funding for the audit period.

	<u>Amount Committed</u>	<u>Amount Disbursed</u>	<u>Service Type</u>
	\$ 56,008.05	\$ 46,882.04	Telecommunications
	\$ 59,634.00	\$ 46,106.70	Internet access
	<u>\$ 64,902.64</u>	<u>\$ 64,902.64</u>	Internal connections
Total*	\$180,544.69	\$157,891.38	

*This total represents 1 application with 12 funding request numbers.

A. General Procedures

We obtained and reviewed the following documents:

1. Form 470 (Description of Services Requested and Certification Form)
2. Form 471 (Services Ordered and Certification Form)
3. Funding Commitment Decision Letter (FCDL) and
4. Program Integrity Assurance (PIA) review notes related to application

B. Understanding the Business

We met with Kennedy's E-Rate Coordinator to gain a detailed understanding of the processes related to the administration of the Schools and Libraries Support Mechanism Program (hereinafter referred to as the "program"). We discussed the results of any communications with the Schools & Libraries Division (SLD) regarding the application process and any differences between the applications submitted and approved. This discussion included the process for creating and validating the technology plan; completing the application forms; the application structure; the controls over the expenditure of the approved E-rate funds; and the procedures established to monitor claims submitted to the SLD via BEAR Form 472 and/or SPI Form 474. We found that there are established procedures to sufficiently address program requirements. No Exceptions Noted.

Universal Service Administrative Company
Internal Audit Report
Lt. Joseph P. Kennedy Institute
Funding Year 2000

C. Technology Plan

We obtained and reviewed the 2000 Technology Plan for adequacy. We verified that it established clear goals and strategies (including professional development) for using information technology to improve education. We also verified that the technology plan was certified by the Archdiocese of Washington. No Exceptions Noted.

D. Competitive Bid Process

We obtained an understanding of Kennedy's competitive bidding (service provider selection) process to determine its adequacy and whether the process has been established to select the most cost effective service provider.

The E-Rate Coordinator informed us that the technical employee responsible for the competitive bid selection process has since separated from the school. Kennedy could not provide documentation to substantiate that the competitive bid selection process was in compliance with FCC, state and/or local competitive bid requirements.

E. Supported Payments

We compared the service provider bills sent to Kennedy with the SPI Form 472 or BEAR Form 474 and performed the following:

1. We reviewed the SPI or BEAR form for accuracy and completeness. No Exceptions Noted.
2. We examined the BEAR forms for the service provider's authorization. No Exceptions Noted.
3. We verified that the equipment and services that supports the amounts claimed on the BEAR and SPI forms were consistent with the service provider bills sent to Kennedy, the terms and specifications of the vendor contracts, and the Item 21 attachment to Form 471. No Exceptions Noted.
4. We traced the SPI and BEAR forms to the corresponding service provider invoices. We recalculated the discounted amount reflected on the SPI and BEAR forms using the approved discount percentage noted on the FCDL. No Exceptions Noted.
5. We ensured that the total amount disbursed via the BEAR and SPI forms agreed to the disbursement data maintained by SLD and that the amounts did not exceed the total amount committed per the FCDL. No Exceptions Noted.

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6. We examined school disbursement records to verify that the school paid its non-discounted portion. No Exceptions Noted.

F. Site Visits

We visited two of the five locations (Buchanan Street and Rhode Island Avenue) and performed the following:

1. We physically verified that the equipment funded by the S&L program exists in the locations noted on the application. No Exceptions Noted.
2. We observed the equipment used to ensure it is used for educational purposes in accordance with S&L program guidelines. In our visit to the Rhode Island Avenue facility, we observed a computer lab purposefully designed to assist students in learning computer skills and searching for job opportunities. Adult education students (over the age of 18) utilize this facility. Per PIA operating procedures, Washington, D.C. adult education facilities/students are not eligible for E-rate funding.

Kennedy Institute Response:

The computer lab referred to in Section F, Para. #2, above, is used by students below GED level. The students using the lab are not in a post-secondary program (e.g., continuing education that a university might offer) and are not beyond grade 12. As such, we believe that the computer lab/students are eligible for E-rate funding in accordance with the Code of Federal Regulations, Title 47, Part 54, Subpart F - Universal Service Support for Schools and Libraries, §54.500 Terms and Definitions. The term "secondary school" is defined as one that does not offer education beyond grade 12.

3. We verified that the equipment purchased with E-rate funds were subjected to the same physical and internal controls that are required for the safeguarding of the applicant's other assets. No Exceptions Noted.

This concludes the results of our audit.

EXHIBIT TWO



Universal Service Administrative Company
Schools & Libraries Division

COMMITMENT ADJUSTMENT LETTER

January 31, 2003

PATRICIA D. MCCAFFREY
LT JOSEPH P KENNEDY JR INST
801 BUCHANAN ST NE
WASHINGTON, DC 20017 3924

Re: COMMITMENT ADJUSTMENT

Funding Year: 2002-2003

Form 471 Application Number: 327671

Dear Applicant:

Our routine reviews of Schools and Libraries Program funding commitments revealed certain applications where funds were committed in violation of program rules.

In order to be sure that no funds are used in violation of program rules, SLD must now adjust your overall funding commitments. The purpose of this letter is to make the adjustments to your funding commitments required by program rules.

FUNDING COMMITMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Report for the Form 471 application cited above. The enclosed report includes a list of the FRNs from your application for which adjustments are necessary. The SLD is also sending this information to your service provider(s), so preparations can be made to implement this decision. Immediately preceding the Funding Commitment Report, you will find a guide that defines each line of the Report.

Please note that if the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the funds disbursed. The amount is shown as Funds to be Recovered. If funds must be recovered, we will be sending your service provider a letter describing the process for recovering these funds in the near future, and we will send a copy of the letter to you. If the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount.